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No. 03-390

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In The
Supreme Court of the United States

IOWA CONFERENCE OF THE UNITED METHODIST CHURCH, THE UNITED METHODIST CHURCH OF SHELL ROCK, IOWA, JERROLD W. SWINTON, RICK KROMMINGA, KAREN WAHL, KAY J. LAHR, and KAREN L. PETERSON,

Petitioners,

v.

JANE KLIEBENSTEIN and GLEN KLIEBENSTEIN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE; AND BRIEF AMICUS CURIAE OF GUIDEONE INSURANCE COMPANY IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

Petitioners Iowa Conference of the United Methodist Church, The United Methodist Church, The United Methodist Church of Shell Rock, Iowa, Jerrold W. Swinton, Rick Kromminga, Karen Wahl, Kay J. Lahr, and Karen L. Peterson consented to the filing of this brief by amicus curiae GuideOne Insurance Company ("GuideOne"). Respondents, Jane and Glen Kliebenstein, withheld consent, even though it was requested. GuideOne hereby moves, pursuant to Supreme Court Rule 37.2(b), for leave to file an amicus curiae brief in support of Petitioners.

Founded in 1947 and headquartered in West Des Moines, Iowa, GuideOne is one of the leading insurers of churches in the United States. GuideOne is licensed to do business in all 50 states and markets its products and services through a network of more than 2,000 independent and career agents. The company carries "Excellent" ratings from A.M. Best Company.

GuideOne insures over 50,000 houses of worship, representing about 20% of the market for non-Catholic, non-Mormon, Christian houses of worship; but also insures synagogues, Buddhist, and Hindu temples. GuideOne markets coverages to houses of worship, but also offers general liability, directors and officers, employment practices, and various property and auto coverages. In connection with its insurance products, GuideOne operates the Center For Risk Management ("CRM"), an organization formed for the explicit purpose of providing risk management services and advice to churches. Through the CRM, GuideOne provides advice to churches on, for example, handling money, building maintenance and

security, personnel practices, and various types of criminal and civil liability.

In its role as insurer, GuideOne frequently works with churches and attorneys on a range of legal issues, including the defense of claims and suits against churches and church personnel. As an insurer of small churches and large denominations (many with churches in more than one state), GuideOne is often able to perceive and evaluate the impact of laws and regulations on houses of worship in a broader manner. GuideOne's background and experience in the advising and defending of churches and church leaders are thus relevant to this case.

The Iowa Supreme Court's assertion of subject matter jurisdiction in this intra-church defamation case raises several issues of concern to GuideOne. First, it is likely from the Iowa Supreme Court's narrow reading of the church autonomy doctrine that more courts will exercise jurisdiction over formerly intra-church disputes. This expansion of jurisdiction over internal church affairs violates one the most fundamental structural restraints on government power. Second, this expansion of jurisdiction will be likely to lead to more lawsuits against churches, as the door to resolving religious disputes is open much wider to disgruntled church members. If the term "spirit of Satan" is libelous, more people will see the civil courts as an option in religious disputes – because the language and methods used by Petitioners in this case are biblically based and commonly used in church disciplinary matters. Third, because of the increase in lawsuits, GuideOne and other insurers will likely advise churches to be more cautious in their disciplinary decisions. Churches and their attorneys will surely share this concern, so it is probable that the Iowa Supreme Court's decision will have

a chilling effect on the exercise of religious speech and conduct. If the ruling stands, then churches will change how they speak and act, as they are forced to decide between religious liberty and costly litigation. Fourth, because the ruling conflicts with decisions of a majority of the other state courts that have addressed the issue *and* with this Court's stated view on the relations of church and state, GuideOne's ability to provide meaningful risk management advice will be diminished.

GuideOne submits this brief to highlight the impact of the Iowa Supreme Court's decision on GuideOne and its insureds. Certiorari review is needed to resolve the significant conflict among the state and federal courts applying the church autonomy doctrine and to provide certainty in an area of law that only this Court controls. Without such review, churches will see an increase in state intrusion in church affairs and a decrease in their religious freedom.

Respectfully submitted,

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BRIEF OF GUIDEONE INSURANCE COMPANY AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

This amicus curiae brief is submitted on behalf of GuideOne Insurance Company ("GuideOne").[1] Petitioners, Iowa Conference of the United Methodist Church, the United Methodist Church of Shell Rock, Iowa, Jerrold W. Swinton, Rick Kromminge, Karen Wahl, Kay J. Lahr, and Karen L. Peterson have consented to GuideOne's filing of this brief. Respondents, Jane and Glen Kliebenstein, have withheld their consent. A motion for leave to file an amicus curiae brief under Supreme Court Rule 37.2(b) is included with this brief.

I. INTEREST OF AMICUS CURIAE

As an insurer licensed to do business in all 50 states, GuideOne insures over 50,000 houses of worship, representing about 20% of the market for non-Catholic, non-Mormon, Christian houses of worship; but also insures synagogues, Buddhist, and Hindu temples. In connection with this coverage, GuideOne operates the Center For Risk Management ("CRM"), an organization formed for the explicit purpose of providing risk management services and advice to churches. Through the CRM, GuideOne provides advice to churches on, for example, handling money, building maintenance and security, personnel practices, and various types of criminal and civil liability.

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[1] This brief was authored by outside counsel for GuideOne. No person or entity, other than GuideOne made a monetary contribution to this brief's preparation or submission. *See* Sup. Ct. R. 37.6. Petitioner is not insured by GuideOne.

In its role as insurer, GuideOne frequently works with churches and attorneys on a range of legal issues, including the defense of claims and suits against churches and church personnel. As an insurer of small churches and large denominations (many with churches in more than one state), GuideOne is often able to perceive and evaluate the impact of laws and regulations on houses of worship in a broader manner. GuideOne's background and experience in the advising and defending of churches and church leaders are thus relevant to this case.

As discussed below, the Iowa Supreme Court's assertion of subject matter jurisdiction in this intra-church defamation case raises several issues of concern to GuideOne and issues that GuideOne is particularly equipped to address. In general, certiorari review of this case is needed to resolve the conflict among the state courts applying the church autonomy doctrine and to provide certainty in an area of law that only this Court authoritatively controls. In addition, the Court should grant certiorari to protect the boundaries between church and state against the erosion caused by the Iowa Supreme Court. Without such review, houses of worship will see an increase in state intrusion in intra-church affairs and a decrease in their religious freedom.

II. SUMMARY OF ARGUMENT

The courts are clogged with cases trying to keep religion from encroaching on the state – this case is about keeping the state out of the internal affairs of the church. The Iowa Supreme Court's conclusion that a civil court can decide whether Petitioners' alleged statement that a congregation had "allowed the spirit of Satan to work in

their midst" is defamatory, is unsupportable if the church autonomy doctrine has any meaning. And this doctrine, which is foundational to our system of government, is the central principle protecting the right of churches to make the decisions about how to run their institutions.

The Iowa Supreme Court's decision highlights in bold terms a conflict that exists among the state courts over how to interpret the church autonomy doctrine in ecclesiastical disputes. Many courts, like the Iowa Supreme Court, exercise jurisdiction in defamation and similar cases with little or no regard for church autonomy. Many more courts, on the other hand, exercise judicial restraint in these kinds of cases, concluding that they have no jurisdiction to hear religious disputes. Most troubling, however, is the fact that the level of state intrusiveness seems to differ as one crosses state lines. So, for instance, a church in Iowa might be held liable for stating in a church disciplinary proceeding that a member is acting in the "spirit of Satan," whereas a church in Ohio would not be liable for the exact same conduct. Whatever the church autonomy doctrine requires, it cannot require different conduct from state to state.

These inconsistent interpretations of the doctrine cause a real fear of state intrusion in church affairs and inhibit the exercise of religious freedom. GuideOne is in the business of insuring churches, and part of that business includes helping churches manage their risks. The inconsistent interpretations of the church autonomy doctrine are a nightmare for churches or denominations with activities in multiple states. As described in the example above, it is possible that a church in one state could be subject to a different level of state scrutiny than the same church in another state. Faced with such conflicting

interpretations of *federal* constitutional rights, churches may censor their religious speech and conduct rather than face the evaluation of such speech by secular tribunals – and the possibility of a big verdict that wipes out its limited funds.[2] This chilling effect on religious liberty is exactly what the church autonomy doctrine was created to prevent.

Although the conflicting interpretations of the doctrine make this case worthy of certiorari review, the Iowa Supreme Court's misapplication of the doctrine on its own warrants review. The decision conflicts with this Court's precedent and undermines the right of churches to make disciplinary decisions affecting their own members. Even assuming,[3] as the Iowa Supreme Court did, that the phrase "spirit of Satan" is capable of *some* secular meaning, in a defamation claim, where truth is a defense, the court will almost certainly become in some way an arbiter of religious truth. A cursory review of the facts shows why. This case arises out of Petitioners' attempts to resolve a religious and doctrinal dispute with a church leader. Petitioners followed United Methodist Church rules on discipline, which rely heavily on biblical teaching. Where

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[2] This is especially so because some claims, such as intentional acts, are not commonly insured against. In some cases, plaintiffs carefully craft their lawsuits to include claims of intent that "get around" insurance coverage because the threat of uninsured liability can add tremendous leverage to the otherwise suspect claims. Without the limitations imposed by the church autonomy doctrine, the suspect claims will carry even more weight in depleting the already-limited assets of religious institutions.

[3] Despite the conclusion by the Iowa Supreme Court, GuideOne can find no reasonable basis for believing that the phrase is capable of a secular interpretation.

the phrase "spirit of Satan" is used, Petitioners cite to biblical passages for support. Those passages bear directly on the dispute and any evaluation of the allegedly defamatory phrase will have to include an assessment of the passages – even if there is *some* secular meaning to the phrase. Such an assessment is precisely what the church autonomy doctrine was created to prohibit.

Unless this Court steps in to correct the many cases, like this case, misapplying or ignoring the doctrine, then one of the primary protections for religious liberty will continue to erode into oblivion. The Court should therefore grant the petition for certiorari.

III. ARGUMENT

A. THIS CASE HIGHLIGHTS THE CONFLICT THAT EXISTS AMONG THE STATES OVER HOW TO INTERPRET THE CHURCH AUTONOMY DOCTRINE IN ECCLESIASTICAL DISPUTES.

This Court should review the Iowa Supreme Court's decision because its interpretation of the church autonomy doctrine is representative of larger confusion among courts over the meaning and scope of the doctrine.

The church autonomy doctrine is about "the right of churches to make for themselves the decisions that arise in the course of running their institutions." Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1394 (1985). Today, this doctrine finds its support in the First Amendment – either the Free Exercise Clause or the Establishment Clause. *See Kedroff v. Saint Nicholas*

Cathedral, 344 U.S. 94, 154-55 (1952) ("[W]e think it must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference."); *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (prohibiting the "excessive entanglement" of church and state under the Establishment Clause); Carl H. Esbeck, *The Establishment Clause as a Structural Restraint on Governmental Power*, 84 Iowa L. Rev. 1, 42-48 (1998) (arguing that church autonomy doctrine is structural and therefore part of the disestablishment principle). But the doctrine is so foundational to our system of government that it applied to the states even before "judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action." *Kedroff*, 344 U.S. at 154; *see* Ira C. Lupu & Robert Tuttle, *The Distinctive Place of Religious Entities in Our Constitutional Order*, 47 Vill. L. Rev. 37, 51 (2002) ("Separationism, however, is not a recent innovation by twentieth century Secularists. Nor is it originally a Secularist position at all. Rather, Separationism has a long legacy as a theological view. . . . "). As this Court articulated, the doctrine is founded on the "broad and sound view of the relations of church and state under our system of laws." *Watson v. Jones*, 80 U.S. 679, 727 (1871).

These contours of the church autonomy doctrine are well known, but, as discussed below, they are often difficult to apply or even ignored, as they were in this case. The intent of the doctrine however is clear: "religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Corporation*

of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 341-42 (1987).

Cases involving the church autonomy doctrine generally can be classified into one of two categories: (1) property disputes to determine which church faction is entitled to control of church property after a schism within the church or between the local and general church; and (2) ecclesiastical disputes involving questions of church discipline, organization, or government. *See* David J. Young, *Into the Religious Thicket – Constitutional Limits on Civil Court Jurisdiction Over Ecclesiastical Disputes*, 47 Ohio St. L.J. 475, 476 (1986). Most of the Supreme Court's decisions have been in cases involving property disputes. *See Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Maryland & Virginia Eldership of the Churches of God v. Church of God*, 396 U.S. 367 (1970); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969); *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952); *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929); *Watson v. Jones*, 80 U.S. 679 (1871). This case is about an ecclesiastical dispute involving a church's right to discipline, and this Court has provided little guidance on the scope and breadth of church autonomy in such disputes. *But see Milivojevich*, 426 U.S. at 717-22 (1976) (involving ecclesiastical dispute over defrockment of priest).

The need for guidance on this structural limitation on the state is evidenced by the diversity of interpretation and application of the doctrine. Many courts, consistent with the Iowa Supreme Court, have exercised jurisdiction in defamation and similar cases with little regard for the

church autonomy doctrine. *E.g.*, *McAdoo v. Diaz*, 884 P.2d 1385, 1391 (Alaska 1994); *Marshall v. Munro*, 845 P.2d 424, 428 (Alaska 1993); *Brewer v. Second Baptist Church*, 197 P.2d 713 (Cal. 1948); *Destefano v. Grabrian*, 763 P.2d 275 (Colo. 1988); *Miles v. Perry*, 529 A.2d 199 (Conn. App. Ct. 1987); *House of God Which is the Church of the Living God, the Pillar and Ground of Truth Without Controversy, Inc. v. White*, 792 So.2d 491 (Fla. Dist. Ct. App. 2001) (dismissing claims against church, but not the pastor); *Steed v. St. Paul's United Methodist Church*, 728 So.2d 931 (La. Ct. App. 1999); *Madsen v. Erwin*, 481 N.E.2d 1160 (Mass. 1985); *St. Luke Evangelical Lutheran Church, Inc. v. Smith*, 568 A.2d 35 (Md. 1990); *F.G. v. MacDonell*, 696 A.2d 697 (N.J. 1997); *McKelvey v. Pierce*, 800 A.2d 727 (N.J. 2002); *Berger v. Temple Beth-El of Great Neck*, 756 N.Y.S.2d 94 (N.Y. App. Div. 2003); *Muresan v. Philadelphia Romanian Pentacostal Church*, 962 P.2d 711 (Or. Ct. App. 1998); *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex. App. – Dallas 2000, pet. denied).

Some cases have even involved statements similar to the ones made in this case. *E.g.*, *Wadsworth v. Beaudet*, 701 N.Y.S.2d 145 (N.Y. App. Div. 1999) ("amongst us is a modern times Judas who divided the church community"); *Murphy v. Harty*, 393 P.2d 206, 214 (Or. 1964) (accused plaintiff of implementing "Satan's plan of division and destruction").

A majority of the courts, however, have exercised judicial restraint in defamation and similar cases, concluding that they are without subject matter jurisdiction where such disputes involve churches and religious issues. *E.g.*, *Belin v. West*, 864 S.W.2d 838 (Ark. 1993); *Gipson v. Brown*, 749 S.W.2d 297 (Ark. 1988); *DeCorso v. Watchtower*

Bible & Tract Soc'y, Inc., 829 A.2d 38 (Conn. App. Ct. 2003); *Anderson v. Freeman*, C.A. No. 13709, 1997 WL 695573 (Del. Ch. 1997); *Kond v. Mudryk*, 769 So. 2d 1073 (Fla. Dist. Ct. App. 2000); *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775 (Fla. Dist. Ct. App. 1998); *First United Church, Inc. v. Udofia*, 479 S.E.2d 146 (Ga. Ct. App. 1996); *Williams v. Palmer*, 532 N.E.2d 1061 (Ill. App. Ct. 1988); *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 714 N.E.2d 253 (Ind. App. Ct. 1999); *Redgate v. Roush*, 59 P.1050 (Kan. 1900); *Bryan R. v. Watchtower Bible & Tract Soc'y, Inc.*, 738 A.2d 839 (Me. 1999); *Downs v. Roman Catholic Archbishop*, 683 A.2d 808, 811-13 (Md. Ct. Spec. App. 1996); *Smith v. Calvary Christian Church*, 614 N.W.2d 590 (Mich. 2000); *Olson v. Luther Mem. Church*, 1996 WL 70102 (Minn. Ct. App. 1996); *Singleton v. Christ the Servant Evangelical Lutheran Church*, 541 N.W.2d 606 (Minn. Ct. App. 1996); *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. Ct. App. 1993); *Brady v. Pace*, 108 S.W.3d 54 (Mo. App. 2003); *Mallette v. Church of God Int'l*, 789 So. 2d 120 (Miss. Ct. App. 2001) (defamation); *Sabatino v. Saint Aloysius Parish*, 654 A.2d 1033 (N.J. Super. Ct. Law Div. 1994); *Decker ex rel. Decker v. Tschetter Hutterian Brethren, Inc.*, 594 N.W.2d 357 (S.D. 1999); *Mason v. Winstead*, 265 S.W.2d 561 (Tenn. 1954); *Tran v. Fiorenza*, 934 S.W.2d 740 (Tex. App. Houston [1st Div.] 1996, n.w.h.); *Franco v. Church of Jesus Christ of Latter-Day Saints*, 21 P.3d 198 (Utah 2001); *Germain v. Pullman Baptist Church*, 980 P.2d 809 (Wash. Ct. App. 1999).

Many courts, in fact, have dismissed defamation claims like the one in this case solely on jurisdictional grounds. *E.g.*, *Sands v. Living Word Fellowship*, 34 P.3d 955 (Alaska 2001) (plaintiff's church called a "cult" and plaintiff called a "cult recruiter"); *McNair v. Worldwide*

Church of God, 242 Cal. Rpr. 823 (Cal. Dist. Ct. App. 1987) (plaintiff accused of "actively fighting God's church. . . . "); *House of God Which is the Church of the Living God, the Pillar and Ground of Truth Without Controversy, Inc. v. White*, 792 So.2d 491 (Fla. Dist. Ct. App. 2001) (action against church barred where pastor called church member a "slut"); *Glass v. First United Pentecostal Church*, 676 So. 2d 724 (La. Ct. App. 1996) (pastor claimed that plaintiffs were "evil spirits in the congregation"); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 936-38 (Mass. 2002) (dismissing defamation claim because it occurred in "context of a religious disciplinary proceeding."); *Rasmussen v. Bennett*, 741 P.2d 755, 758-59 (Mont. 1987) ("we got the filth cleaned out of the congregation, now we will have God's spirit."); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio Ct. App. 1997) (trustees of church asserted that plaintiff "had lied, that he was in league with Satan, that he had been overtaken by a fall, that he was a defiler of a temple and an enemy of the Church and that he was sleeping around."); *Hadnot v. Shaw*, 826 P.2d 978, 988-89 (Okla. 1992) (dismissing defamation claim where statements communicated to the public); *Williams v. Gleason*, 26 S.W.3d 54 (Tex. App. Houston [14th Dist.] 2000, pet. denied) (plaintiffs accused of committing sins "by sowing seeds of discord among the brethren").[4]

The examples cited above are by no means the only cases applying the church autonomy doctrine, and they represent but a sample of the various ways courts have addressed these issues. This conflict is unique in the sense

[4] See the Petition for Writ of Certiorari for a more detailed explication of many of these cases.

that it involves almost exclusively the state courts applying federal constitutional principles. Only this Court can resolve these issues once and for all.

Where there are conflicts between the decisions of state supreme courts and that of this Court on a matter of federal law, the Court often grants petitions for certiorari. *See Hudson v. Louisiana*, 450 U.S. 40, 42 (1981); *William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12, 14 (1974); *Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369, 371-72 (1974). This is especially true where there is a federal constitutional right at stake. *See Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 362 (1984). The Court should therefore grant certiorari to clear up the serious confusion among the courts over how to construe the church autonomy doctrine in ecclesiastical disputes.

B. THE INCONSISTENT INTERPRETATIONS OF THE CHURCH AUTONOMY DOCTRINE LEAD TO THE FEAR OF STATE INTRUSION IN CHURCH AFFAIRS AND INHIBIT RELIGIOUS FREEDOM.

The inconsistent interpretations of the church autonomy doctrine diminish a church's ability to manage its risks because they create uncertainty about how involved the state will become in the internal affairs of the church – and what liability might result from such intrusion. This fear of state intrusion in church affairs has a chilling effect on the church's and its religious leaders' religious freedom. By clearing up the inconsistent application of the church autonomy doctrine, this Court can reduce this confusion and restore religious liberty to the churches in this country.

As an insurer of risks, GuideOne provides risk management advice to the churches that it insures. Such guidance is of necessity somewhat generalized, and the insureds are usually encouraged to seek their own expert advisors. However, it is often difficult for risk management advisers to know where there might be major legal variations and adjust their advice accordingly. Insurers deal with variations in states' laws as a consequence of our federalist system. *See Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 787-88 (1982) (O'Connor, J., dissenting) ("Courts and commentators frequently have recognized that the 50 states serve as laboratories for the development of new social, economic, and political ideas."). However, variations in the interpretation of *federal* laws or rights are not similarly justified or expected. U.S. CONST. art. VI, para. 2 ("This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby."). This is especially true when federal constitutional rights are at stake, as they are in this case. *See Milivojevich*, 426 U.S. at 710; *Presbyterian Church*, 393 U.S. 440; *Watson*, 80 U.S. at 733. There is thus no justification for the variations in interpretations of the church autonomy doctrine among the state courts.

The impact on First Amendment rights from these variations is easily apparent when the church is part of a large denomination that operates in multiple jurisdictions. The result in such a case is a chilling effect on the free exercise of religion. For instance, consider a large denomination that has churches in Ohio and Iowa. Iowa now allows civil courts to resolve religious disputes much more freely than Ohio permits. Compare *Kliebenstein v. Iowa Conference of United Methodist Church*, 663 N.W. 2d 404 (Iowa 2003) (holding "spirit of Satan" could be defamatory)

with *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio Ct. App. 1997) (statements that plaintiff "had lied, that he was in league with Satan, that he had been overtaken by a fall, that he was a defiler of a temple and an enemy of the Church and that he was sleeping around" could not be defamatory). These variations necessitate that the denomination's member churches conduct themselves in a different manner in Ohio than they do in Iowa even when they confront the same type of issue. If there is a church discipline issue, for example, the church may simply not be able to express its deeply held belief openly for fear of liability in Iowa, although a member of the same denomination could express the same belief with impunity in Ohio.[5] Likewise, if a church makes the same comment about two people but one lives in Iowa and the other in Ohio, then it could be liable to the former but not to the latter. This happens frequently, but not on matters of federal law.

In the face of such conflicts, one of the likely outcomes is that the denomination will simply modify its behavior in

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[5] Variations in laws between the states and circuits have a complicating effect upon the setting of rates and losses, all of which ultimately add to the expense paid by churches in the form of insurance premiums. Of course, the risk management, or loss avoidance, ramifications of this issue are more significant. But if states have different laws, such as on the level of state intrusion permitted in church affairs, then loss experience may be different, which means the same type of risk from state to state may be subject to different premiums. Thus, a church in Iowa could pay higher premiums than a similarly situated church in a neighboring state, such as Ohio, solely because of how the states' courts interpret the First Amendment. **Such logic would amount to a surcharge on religious expression and freedom.** The burden of the inconsistent interpretations of the church autonomy doctrine should not fall on those the doctrine is designed to protect.

such a way as to meet the demands of the most intrusive state (Iowa) – sort of a lowest common denominator approach. Thus, the church might instruct its church leaders to resist using terms like "spirit of Satan" because to do so could subject the church to liability in civil courts. Such a restriction may mean little to those outside the church family, but doctrinal disagreements – sometimes heated – are often important to the health of a church. *See* Jaroslav Pelikan, *The Christian Tradition: A History of the Development of Doctrine* (Chicago 1975).[6] In fact, as in this case, the resolution of doctrinal or religious disagreements are often vital to the continuing existence of the church.

This demonstrates one of the central constitutional concerns in these cases – churches will be forced to restrict the kinds of theological discussions and rhetoric they engage in because they fear the threat of civil intrusion or liability. The simple uncertainty in liability chills the church's exercise of its religious freedom because the state breaches the wall of separation that was meant, in great part, to protect *religion from the state*. *Watson*, 80 U.S. at 730 ("The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of civil authority.").

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[6] *See* Irenaeus, *Libros Quinque Adversus Haereses* 5.26.I (In arguing against the gnostics: "Let those persons who blaspheme the Creator ... as [do] the Valentinians and all the falsely so-called 'gnostics,' be recognized as agents of Satan by all who worship God. Through their agency Satan even now ... has been seen to speak against God, that God who has prepared eternal fire for every kind of apostasy.").

This Court should grant certiorari in this case to provide a uniform interpretation of the church autonomy doctrine and return to churches the power to decide matters of faith, doctrine, and internal governance free from state interference. *Kedroff*, 344 U.S. at 116.

C. THE IOWA SUPREME COURT'S INTERPRETATION OF THE CHURCH AUTONOMY DOCTRINE CONFLICTS WITH SUPREME COURT PRECEDENT AND UNDERMINES THE RIGHT OF CHURCHES TO MAKE DISCIPLINARY DECISIONS AFFECTING THEIR MEMBERS.

The Iowa Supreme Court completely misinterpreted the church autonomy doctrine when it concluded that it is possible to avoid getting involved in religious issues because the phrase "spirit of Satan" has secular meanings. Even assuming that it is true that the phrase is capable of *some* secular meaning, the Iowa Supreme Court's decision will necessarily embroil the civil courts in a religious dispute. This is true because, under Iowa law, "substantial truth is a defense in a defamation action." *Hovey v. Iowa State Daily Publ'n Bd., Inc.*, 372 N.W.2d 253, 256 (Iowa 1985). The defendant church in this case would seek to prove its defense by showing that the plaintiff did not walk in the "spirit of Jesus" but instead walked in the "spirit of Satan." What does it mean to do one or the other? There is no way that a civil court can make such a determination without delving into how the church itself defines those terms.

This is a problem of judicial competence that is highlighted by the Iowa Supreme Court's selective quotes from the letter at issue in this case. The court included the

letter in its opinion, but did so with several well-placed ellipses, which ostensibly are meant to omit words or clauses that are not necessary to convey the meaning of a passage. *Webster's II New College Dictionary*, 365 (1999). As it referred to the relevant portion of the letter, the Iowa Supreme Court quoted: "You know whether a person has the spirit of Jesus or Satan by their fruits. . . . I am distressed and perplexed why people have tolerance and compassion for anyone who habitually tears down the Body of Christ by habitually sowing discord and pain." *Kliebenstein*, 663 N.W.2d at 405. What the court left out by use of the ellipsis was the citation in the letter to the biblical passage found in Matthew 7:15-20, which reads:

> Watch out for false prophets. They come to you in sheep's clothing, but inwardly they are ferocious wolves. By their fruit you will recognize them. Do people pick grapes from thornbushes, or figs from thistles? Likewise every good tree bears good fruit, but a bad tree bears bad fruit. A good tree cannot bear bad fruit, and a bad tree cannot bear good fruit. Every tree that does not bear good fruit is cut down and thrown into the fire. Thus, by their fruit you will recognize them.[7]

Without reference to the religious teachings of the specific church citing the passage, how is a civil court equipped to determine what it means? What does being a "false prophet" entail? What does it mean for a person to come as a "ferocious wolf"? What does it mean to bear "good fruit" or "bad fruit"? What does it mean to say that a person will be "cut down and thrown into the fire?" Theologians

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[7] Matthew 7:15-20 (New International Version).

themselves do not always agree on the answers to these questions. Yet these and other questions have relevance because Petitioners will of necessity be allowed to show that the allegation that Respondent was walking in the "spirit of Satan" was true. It is hard to see how the evaluation of such claims will not entangle the court in the task of resolving a specifically religious dispute.[8]

If the church autonomy doctrine is meant to do anything, it is meant to prevent exactly what the Iowa Supreme Court requires in this case. Civil courts are simply not competent to judge ecclesiastical matters. *Milivojevich*, 426 U.S. at 714-15 & n.8 ("Civil judges obviously do not have the competence of ecclesiastical tribunals in applying the 'law' that governs ecclesiastical disputes. . . . "). The Iowa district court opinion makes clear certain matters which the Iowa Supreme Court ignores: the letter sent by Reverend Swinton was written and sent as part of a disciplinary matter, and the letter followed the United Methodist Church *Book of Discipline*, which is the official teaching, law, polity, and governance of the United Methodist Church. As the letter states, Petitioners were trying to resolve a disciplinary problem within the church. *See Amos*, 483 U.S. at 341-42 (noting how church autonomy includes the right to "resolve their own disputes").

In addition to the issue of judicial competence, this Court has also held from the beginning that church disciplinary disputes are off limits because of the very

[8] The same problem arises for the other reference to "spirit of Satan" contained in Reverend Jerrold Swinton's letter. *See Kliebenstein*, 663 N.W.2d at 405 (citing 1 John 3:4-10). The civil courts are completely unequipped to address this passage in a truly secular manner.

nature of the relationship of the disputants. *Watson*, 80 U.S. at 729 ("All who unite themselves to such a body do so with an implied consent to this [church] government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed."). Thus, the idea that aggrieved church members would attempt to conscript civil courts in a religious battle was a central basis for the prohibition embodied in the church autonomy doctrine.

Ignoring these admonitions, the Iowa Supreme Court requires courts to determine what is religious and what is secular – something this Court has held they are not competent to do. *See United States v. Lee*, 455 U.S. 252, 257 (1982) (quoting *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 716 (1981)) (" 'Courts are not arbiters of scriptural interpretation' "); *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977) ("The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment. . . . "); *Lemon v. Kurtzman*, 403 U.S. 602, 620 (1971) ("[S]tate inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids."); *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953) ("[I]t is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment."); *United States v. Ballard*, 322 U.S. 78, 86-87 (1944). The Iowa Supreme Court's ruling completely undermines the boundaries between church and state recognized by this Court.

As it has done in other cases, this Court should grant certiorari to determine whether a state court has properly interpreted, applied, or extended prior Supreme Court decisions. *E.g.*, *Campbell v. Louisiana*, 523 U.S. 392, 395-96 (1998); *Bullington v. Missouri*, 451 U.S. 430, 432 (1981); *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965); *Oregon v. Mathiason*, 429 U.S. 492, 493 (1977); *Hankerson v. North Carolina*, 432 U.S. 233, 240 (1977). The Court has taken care to make uniform the interpretations of the Establishment Clause and Free Exercise clause in other instances, such as those cases involving school prayer, aid to churches, and equal access. *See e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (vouchers); *Good News Club v. Milford Central Sch.*, 533 U.S. 98 (2001) (equal access); *Sante Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (prayer in school); *Mitchell v. Helms*, 530 U.S. 793 (2000) (religious school aid); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993) (equal access); *Lee v. Weisman*, 505 U.S. 577 (1992) (prayer in school). This Court does so to protect the boundaries that have developed between church and state, for the protection of both.

In this case, the Court should grant certiorari to protect the boundaries between church and state against the erosion caused by the Iowa Supreme Court.

IV. CONCLUSION

As argued by the Petitioner, and supported by the foregoing additional reasons, the Petitioners' writ of certiorari should be granted.

Respectfully submitted,

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